

15998

ORDINANCE NO: _____

AN ORDINANCE AMENDING TITLE 2 OF THE MUNICIPAL CODE OF THE CITY OF EL PASO (ADMINISTRATION AND PERSONNEL), BY ADDING A NEW CHAPTER 2.38 (BUILDING AND STANDARDS COMMISSION), AUTHORIZED BY TEXAS LOCAL GOVERNMENT CODE §54.043, TO HEAR AND DETERMINE CASES CONCERNING VIOLATIONS OF CHAPTER 18.50 OF THE MUNICIPAL CODE WITHOUT FURTHER APPEAL TO CITY COUNCIL; THE CIVIL PENALTY FOR VIOLATION OF A COMMISSION ORDER NOT TO EXCEED ONE-THOUSAND DOLLARS (\$1,000.00) PER DAY PER VIOLATION FOR NON-HOMESTEAD PROPERTY AND (\$10.00) PER DAY PER VIOLATION FOR HOMESTEAD PROPERTY AS PROVIDED IN SECTION 2.38.110 OF THE MUNICIPAL CODE.

WHEREAS, the City Council created the Building and Zoning Advisory Committee (BZAC) to, in part, undertake a major revision to the Building Codes of the City, including the Building and Construction Administrative Code; and

WHEREAS, the Building Permits and Inspections Department has proposed amending the Municipal Code by creating a Building and Standards Commission to hear and determine cases concerning alleged violations of Chapter 18.50; and

WHEREAS, the Building Permits and Inspections Department has favorably recommended and the Building and Zoning Advisory Committee (BZAC), Development Coordinating Committee and City Plan Commission have reviewed and recommended amending the Administrative Code to create the Building and Standards Commission; and

WHEREAS, Texas Local Government Code §54.043 provides a municipality with the authority to create a Building and Standards Commission to hear and determine violations of ordinances as enumerated in Texas Local Government Code §54.032,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

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1. That Title 2 (ADMINISTRATION AND PERSONNEL) shall be and hereby is amended by adding Chapter 2.38 (Building and Standards Commission) to read as follows:

CHAPTER 2.38

BUILDING AND STANDARDS COMMISSION

2.38.010 Purpose.

The purpose of this Chapter is to provide for creation and appointment of the Building and Standards Commission pursuant to Texas Local Government Code §54.043 to hear and determine cases concerning violations of El Paso City Code Chapter 18.50.

2.38.020 Appointment.

- A. There is established a Board to be called the Building and Standards Commission, hereinafter referred to as "Commission." The Commission shall consist of eighteen (18) regular members and nine (9) alternate members. Each City Council Representative and the Mayor shall nominate two (2) regular members and one alternate member to the Commission, all of who shall be appointed by the City Council. Priority for consideration of each nominee in each category shall be based on the date and time the nomination is received by the City Clerk for posting on the City Council agenda. Vacancies shall be filled by City Council appointment in the same manner in which initial appointments are made.
- B. Members and alternate members must be residents of the City of El Paso. Their appointment will be made for a two (2) year term, which term is to commence on the date of adoption of this ordinance. All members and alternate members shall serve until their successors are appointed and qualified.
- C. Alternate members must meet the same requirements and qualifications as regular commission members, except that an alternate member has voting privileges only when sitting in for an absent member.
- D. The Director for Building Permits and Inspections Department (hereinafter referred to as Director), the El Paso City-County Health and Environmental District Director, the Fire Official, and the Chief of Police or their designees shall serve in an advisory capacity as ex officio members of the commission with no voting privileges.

2.38.030 Membership and Terms.

- A. The Commission shall consist of:
 - (1) Two (2) registered architects with experience in the construction of buildings and housing;
 - (2) Two (2) mortgage loan bankers and/or brokers;

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- (3) Two (2) State-licensed homebuilders and/or general contractors with experience in the construction of residential and/or commercial projects;
 - (4) Two (2) licensed real estate brokers;
 - (5) Two (2) persons who are engaged in social or welfare work;
 - (6) Two (2) structural engineers with experience in the construction of commercial buildings;
 - (7) One (1) Certified Public Accountant; and
 - (8) One (1) Certified Real Estate Appraiser; and
 - (9) Four (4) members chosen on the basis of their interest in community affairs and their impartiality, fairness, and judicial temperament.
- B. Alternates may be of any category allowed for regular members of the Commission. Alternate members shall sit in the absence of regular members. The first alternate to be selected to replace a regular member shall be the alternate nominated by the same Council Representative, or the Mayor, that nominated the absent regular member. If both the regular member and alternate member nominated by that Council Representative are absent, any other alternate member may be selected. When sitting in the absence of a regular member, an alternate member shall have all rights and authority of the regular member.
- C. The terms of office for regular members and alternate members shall commence ninety (90) days after the adoption of this Chapter and the procedures of the Commission shall comply with the requirements of Chapter 2.04 of the El Paso Municipal Code.
- D. A Commission member may be removed by City Council for cause on a written charge. A public hearing on said removal must be held by City Council if requested by the affected Commission member.

2.38.040 Procedures of the Commission.

- A. The Commission may adopt rules that are consistent with this chapter and Chapter 2.04 and that are approved by the City Attorney. Meetings of the Commission or a hearing panel will be held at the call of the Chair, or in the Chair's absence the Vice-Chair, or an Acting Chair designated by the Chair, or as the Commission may determine. All meetings of the Commission or its hearing panels must be open to the public. The Chair, Acting Chair, or Vice-Chair may administer oaths and compel the attendance of witnesses.
- B. The Director or a designee of the City Manager shall act as secretary to the Commission and the hearing panels. Each hearing panel shall keep minutes of its proceedings

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showing the vote of each member on each question or the fact that a member is absent or fails to vote. Each hearing panel shall keep records of its examinations and other official actions. The minutes and records must be filed immediately in the office of the City Clerk.

- C. At each hearing of a hearing panel, an owner, lessor, occupant, lienholder, mortgagee or a legal representative is entitled to present evidence and witnesses and to cross-examine any witness appearing against the owner, lessor, occupant, lienholder, or mortgagee.
- D. After a public hearing the decision of a hearing panel is final as to administrative remedies and a rehearing may not be granted except as provided by Section 2.38.100.
- E. Once the decision of a hearing panel has become final as to administrative remedies under this section or 2.38.100, any owner, lienholder, or mortgagee of record jointly or severally aggrieved by an order may file in state district court a verified petition setting forth that the panel's decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee of record within thirty (30) calendar days after the respective dates a copy of the final decision of the hearing panel is personally delivered or mailed by first class mail, certified return receipt requested, to all persons to whom notice is required to be sent under Section 2.38.090 of this chapter, or the decision will become final as to judicial remedies upon expiration of each person's thirty (30) calendar day period. Appeal in the district court is limited to a hearing under the substantial evidence rule.
- F. If no appeals are taken from the decision of the hearing panel of the Commission within the required period, the decision of the Building and Standards Commission shall be final and shall not be appealed to the City Council.

2.38.050 Hearing Panels.

- A. The Chair of the Commission shall divide the Commission into two (2) hearing panels for the purpose of performing the duties of the Commission. The two (2) panels will be composed of nine (9) members. Five (5) members constitute a quorum. Decisions of a hearing panel are made by a concurring majority vote of the members present.
- B. The Chair or the Secretary of the Commission is responsible for obtaining a quorum for each meeting of a panel. In the absence of a regular member, the Mayor or City Manager may assign an alternate member or a member from another panel to serve.
- C. For the purpose of fulfilling attendance requirements, the Chair is only required to attend the regular meetings of one of the hearing panels.
- D. Each hearing panel shall select a panel Chair and a Vice-Chair.
- E. The Director or a designee of the City Manager shall assign cases, other than rehearings, to the hearing panels on a rotation basis. A rehearing must be assigned to the same

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hearing panel that originally heard the case, unless the Chair finds that exigent, compelling, or exceptional circumstances exist that require the case to be reheard by the other panel.

- F. Each hearing panel has the same authority as the full Commission.
- G. A decision by a hearing panel constitutes a decision of the Commission.
- H. A Commission member shall not discuss or vote on any case in which that member has a personal interest or in any manner that would constitute a violation of the City Ethics Ordinance, pursuant to Chapter 2.92 of the El Paso Municipal Code.
- I. A Commission member shall not participate in ex parte communication with any individual concerning any issue that is being heard by the Commission.

2.38.060 Secretary of the Commission.

The Director or a designee of the City Manager shall act as secretary of the Building and Standards Commission and shall serve without the right to vote and shall not be counted for purposes of constituting a quorum. The Secretary of the Commission shall make a record of its proceedings and procedures, and shall set forth the reasons for the decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote. Such record of meeting minutes shall be filed with the City Clerk as required in Section 2.38.040.B.

2.38.070 Powers.

A. A hearing panel has the following powers and duties:

- (1) To declare a building substandard;
- (2) To order the repair, within a fixed period, of buildings found to be in violation of City Code 18.50;
- (3) To order the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of City Code 18.50, and order other action to be taken as necessary to remedy, alleviate or remove any substandard building found to exist;
- (4) To issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the municipality, to enforce and carry out the lawful orders or directives of the commission panel; or
- (5) To determine the amount of civil penalty the municipality may recover as provided in Texas Local Government Code §54.017.

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- B. In addition to the powers and duties of the hearing panels, the Commission shall periodically meet as a whole for the purpose of planning and advising the City Council on matters concerning substandard housing and enforcement of this chapter.

2.38.080 Failure to Comply with Commission Order.

- A. A person commits an offense if s/he fails to correct a violation of this chapter in compliance with a Commission order that has become final under Section 2.38.040 or 2.38.100.
- B. It is a defense to prosecution under Subsection A that the Commission order has been appealed to the State District Court and the Commission order has not been upheld on appeal.

2.38.090 Urban Nuisance; Repair, Demolition, Vacation, Reduction In Occupancy Load, Relocation, Securing, And Civil Penalties; Hearings; Notice.

- A. The Director or a designee of the City Manager, in compliance with this section, shall give notice of a hearing to consider repair, demolition, vacation, reduction of occupancy load, securing of a structure, or the relocation of the occupants of a structure, or the assessment of a civil penalty against the owner, or any combination of those actions, to the owner of the structure and any mortgagee or lienholder of record of the real property concerned. A structure may be considered for repair, demolition, vacation, and a civil penalty if the structure is not maintained in compliance with one or more of the minimum standards of Chapter 18.50. A structure may be considered for a reduction of occupancy load if it is overcrowded under Chapter 18.50.
- B. Notice of the hearing must include:
- (1) the date, time, and place of the hearing;
 - (2) an identification, which is not required to be a legal description, of the structure and the property on which it is located;
 - (3) a description of the alleged violation or violations of minimum standards that are present on the property; and
 - (4) a statement that the owner, lienholder, or mortgagee must submit at the hearing proof of the scope of any work that may be required to comply with this chapter and the time it will take to reasonably perform the work.
- C. On or before the tenth (10th) day before the hearing date, notice of the hearing must be:
- (1) personally delivered or mailed, by certified mail, return receipt requested, to the record owners of the affected property, and each holder of a recorded lien against the property, as shown by the records in the office of the county clerk of the county in which the property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien or any other applicable instruments on file in the office of the county clerk;
 - (2) posted, to all unknown owners, on the front door of each improvement situated on the affected property or as close to the front door as practicable; and
 - (3) published on one occasion in a newspaper of general circulation in the city.

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D. The Commission may file in the official public records of real property in the county in which the affected property is located a notice of the hearing that contains the following information:

- (1) the name and address of the property owner, if that information can be determined;
- (2) a legal description of the property; and
- (3) a description of the hearing.

A notice filed in compliance with this subsection binds any subsequent grantee, lienholder, or other transferee of an interest in the property who acquires the interest after the filing of the notice and constitutes notice of the hearing to any subsequent recipient of any interest in the property who acquires the interest after the filing of the notice.

E. A public hearing to consider repair, demolition, vacation, reduction of occupancy load, securing of a structure, or the assessment of a civil penalty against the owner, or the relocation of the occupants of the structure, or any combination of those actions, must be before a hearing panel of the Commission after notice of the hearing has been given to the owner, lienholder, and mortgagee in compliance with this section. If the record shows that the notice was received by a person designated in this subsection less than five (5) days before the hearing, the person shall, upon request at the hearing, receive a resetting of the hearing. Written notice of the rescheduled hearing may be given personally to persons in attendance at that time. Notice of the rescheduled hearing to any person not in attendance must be given in the same manner required for an initial hearing under 2.38.090. At the hearing:

- (1) The Director or a designee of the City Manager shall present evidence of the condition of a structure and other relevant issues;
- (2) An owner, lienholder, or mortgagee shall present evidence of the scope of work and time required to comply with this chapter and may present evidence and witnesses on other relevant issues and cross-examine witnesses; and
- (3) A lessor, an occupant, or any other interested person may present evidence and witnesses on relevant issues and cross-examine witnesses.

F. At any hearing to determine whether a structure complies with the minimum standards set out in this chapter, the Director or a designee of the City Manager has the burden of proof to demonstrate the existence of each alleged violation of those standards described in the notice of the hearing. The owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this chapter and the time it will take to reasonably perform the work. A hearing panel shall make its decision based on a preponderance of the evidence presented at the hearing.

G. A hearing panel, after hearing evidence from each interested person present, may do one or more of the following:

- (1) Find that the structure is not an urban nuisance and refer the matter to the Director or designee of the City Manager for appropriate action, if any;

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- (2) Find that the structure is an urban nuisance, specifically describing each minimum standard found to be violated, and order one or more of the following:
- (a) Demolition of the structure by the owner, lienholder, or mortgagee within thirty (30) days, unless an extension is granted under Subsection (H);
 - (b) Demolition of the structure by the city if demolition by the owner, lienholder, or mortgagee is not timely effected in compliance with a Commission order issued under this subsection, provided that this order may not be issued as a default action except in conjunction with a demolition order issued under Paragraph 3(A) of this subsection. If the City incurs expenses under this section, the expenses may be assessed and a lien shall be placed on the property on which the building was located, unless the property is a homestead as protected by the Texas Constitution;
 - (c) Repair of the structure by the owner, lienholder, or mortgagee as needed to correct every violation of minimum standards found by the Commission to exist at the structure, the repair to be accomplished within thirty (30) days, unless an extension is granted under Subsection H;
 - (d) Repair of the structure by the city as needed to correct every violation of minimum standards found by the Commission to exist at the structure, if repair by the owner, lienholder, or mortgagee is not timely effected in compliance with a Commission order issued under this subsection. Repairs performed by the City may only be done to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with ten (10) or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum standards as set forth in City Code 18.50. If the City incurs expenses under this section, the expenses may be assessed and a lien shall be placed on the property on which the building was located, unless the property is a homestead as protected by the Texas Constitution;
 - (e) Vacation of the structure by the owner, lienholder, or mortgagee, within a specified period of time;
 - (f) Vacation of the structure by the city if vacation by the owner, lienholder, or mortgagee is not timely effected in compliance with a Commission order issued under this subsection. If the City incurs expenses under this section, the expenses may be assessed and a lien shall be placed on the property on which the building was located, unless the property is a homestead as protected by the Texas Constitution;
 - (g) The assessment of a civil penalty against the owner for each day or part of a day that the owner fails to repair or demolish the structure in compliance with a Commission order issued under this subsection;

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- (h) To recommend to City Council that a cause of action to be brought in District Court in accordance with Section 214.003 of the Texas Local Government Code for the appointment of a receiver of the property;
- (3) Find that the structure is overcrowded under Chapter 18.50 and order a reduction of occupancy load;
- (4) Find that the structure is open and vacant and order one or more of the following:
 - (a) Securing of the structure by the owner, lienholder, or mortgagee from entry by unauthorized persons within thirty (30) days; or
 - (b) Securing of the structure by the City if the securing by the owner, lienholder, or mortgagee is not timely effected in compliance with a Commission order.
- (5) If delinquent taxes are owed on the property, the Commission may defer any final action on the property pending settlement of the delinquent taxes if such deferral would not further endanger public health, safety and welfare. The owner(s) and/or lienholder(s) must agree to secure the premises and maintain it secure. The Commission will specify the conditions that would require the property to be referred back to the Commission by the Director or designee of the City Manager.

H. Time extensions for complying with an order to repair or demolish a structure.

- (1) The hearing panel may allow more than thirty (30) days to comply with an order to repair or demolish a structure under Subsection G(2), if the owner, lienholder, or mortgagee establishes at the hearing that the work cannot reasonably be performed within thirty (30) days. The panel shall establish a specific time schedule for the commencement and performance of the work and require the owner, lienholder, or mortgagee to secure the property from unauthorized entry while the work is being performed.
- (2) The hearing panel may not allow more than ninety (90) days to comply with an order issued under Subsection G(2) unless the owner, lienholder, or mortgagee:
 - (a) Submits at the hearing a detailed plan, which may include plot plan(s), floor plan(s), sections and architect and/or engineer recommendations, as determined by the Commission and time schedule for the work; and
 - (b) Establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.
- (3) If a hearing panel allows more than ninety (90) days to complete any part of the work required to repair or demolish the structure under Subsection G(2), it shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the panel demonstrating compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the hearing panel or the Director or designee of the City Manager to demonstrate compliance with the time schedules.
- (4) If the owner, lienholder, or mortgagee owns property, including structures and improvements on property, within the city boundaries that exceeds \$100,000 in total value, the hearing panel may require the owner, lienholder, or mortgagee to

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post a cash or surety bond in an amount adequate to cover the cost of repairing or demolishing a structure under Subsection H(3). In lieu of a bond, the hearing panel may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the city. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the thirtieth (30th) day after the date the panel issues the order. The Commission shall establish rules and procedures, to be approved by the City Attorney, governing when a bond, letter of credit, or third party guaranty will be required under this paragraph.

- I. The Commission order issued pursuant to Subsection G shall include the following:
- (1) A statement as to whether the structure or part thereof can be made safe;
 - (2) An order providing for the vacation, relocation of occupants, securing, repair, removal, or demolition of the structure or part thereof;
 - (3) A period of time, not less than thirty (30) days during which the record owners shall comply with the orders of the Commission;
 - (4) An additional period of time during which the mortgagees or lienholders may comply with the orders of the Commission;
 - (5) A statement that failure of the record owners, mortgagees or lienholders to comply may result in the vacation, relocation of occupants, securing, repair, removal, or demolition of the structure or part thereof by the city at its own expense but for and on account of the owner of such real property, the cost of which account shall become a claim to be secured by a lien against the real estate, due and payable within thirty (30) days of the date of completion of the work;
 - (6) A statement setting forth the penalties for disregarding the Commission's order in accordance with this Chapter;
 - (7) A statement that the owner, mortgagee or lienholder shall have a right to appeal within thirty (30) calendar days after notice to a court of competent jurisdiction and that failure to do so within thirty (30) calendar days after receipt of notice shall result in the findings becoming final; and
 - (8) A statement that any civil penalty or assessment imposed will accrue interest at a rate of ten percent (10%) a year from the date of the assessment until paid in full.
- J. After the Commission issues an order under Subsection G the Director or designee of the City Manager shall promptly personally deliver or mail by certified mail, return receipt requested, a copy of the order to each owner, lienholder, and mortgagee of the structure and shall provide a copy of the order to the City Clerk, who shall file said order in the deed records of the county in which the property is located. If an order to repair, demolish, vacate, reduce in occupancy load, or secure a structure, or to relocate the occupants of a structure, is timely effected, the Director or designee of the City Manager, upon request and payment of the cost by the owner, shall provide a "Notice of Compliance" to the City Clerk for filing in the deed records of the county in which the property is located. Every notice given under this subsection must include an identification, which is not required to be a legal description, of the structure and property on which it is located, and a description of the violation of minimum standards that is

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present at the property.

- (1) When an order issued under Subsection G has been filed in the deed records of the county in which the property is located, execution of the order is not affected by a sale or other transfer of the premises. A person acquiring interest in property after an order has been so filed is subject to the requirements of the order. The provisions of this subsection must be included as a part of each order.
- (2) In addition to the notice requirements of this section, within ten (10) days after mailing, a copy of an order issued under Subsection (G), the Director shall:
 - (a) File a copy of the order in the office of the city clerk; and
 - (b) Publish one time in a newspaper of general circulation in the city an abbreviated copy of the order containing the street address or legal description of the property, the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained.

K. Demolition, vacation, and securing of a structure, and the relocation of the occupants of a structure, may be accomplished by an owner, lienholder, or mortgagee as compliance with this section, or by the city if not timely accomplished by the owner, lienholder, or mortgagee. Repair of a structure may be accomplished by an owner, lienholder, or mortgagee as compliance with this section, or by the city if not timely accomplished by the owner, lienholder, or mortgagee, but only to the extent necessary to bring the structure into compliance with minimum standards and only if the structure is a residential structure with not more than ten (10) dwelling units. Performance of work by the city under this subsection does not limit the ability of the city to collect on a bond or other financial guaranty that may be required from the property owner, lienholder, or mortgagee under Subsection H(4) of this section.

L. If the Director or designee of the City Manager determines that the owner, lienholder, or mortgagee has not timely complied with an order issued under Subsection G (2)(a), (c), or (e), Subsection G (3), Subsection G(4)(a), of this section, and the Commission order included a provision authorizing the city to perform work or to assess a civil penalty upon failure of the owner, lienholder, or mortgagee to comply with the order, the Director or designee of the City Manager shall promptly give notice to each owner, lienholder, and mortgagee of the demolition, repair, vacation, or securing of the structure by the city, or the relocation of the occupants of the structure by the city, or the assessment of a civil penalty, whichever is applicable. The notice must include:

- (1) An identification, which is not required to be a legal description, of the structure and the property on which it is located;
- (2) An identification of the Commission order affecting the property;
- (3) A description of each violation of minimum standards found by the Commission to be present on the property;
- (4) A description of any work ordered by the Commission to correct each violation on the property;
- (5) The amount of any civil penalty ordered by the Commission if each violation is not corrected in compliance with the Commission order;

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- (6) A statement that the owner, lienholder, or mortgagee has not timely complied with the Commission order; and
 - (7) The date and time the city will begin performance of the work or assessment of the civil penalty in accordance with the Commission order.
- M. On or before the twentieth (20th) day before the city begins performance of work or the assessment of a civil penalty on property subject to a Commission order, the notice required under Subsection (K) must be:
- (1) Personally delivered or mailed, by certified mail, return receipt requested, to each owner, lienholder, and mortgagee of the structure;
 - (2) Posted, to all unknown owners, on the front door of each improvement situated on the affected property or as close to the front door as practicable; and
 - (3) Published on one occasion in a newspaper of general circulation in the city.
- N. Any lien placed on the subject property in accordance with Subsection (G) is extinguished if the property owner or another person having interest in the legal title to the property reimburses the City for the expenses. The City Manager or her designee is authorized to release any lien assessed, subject to full payment of expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the County Clerk in the County in which the property is located. Notice of the lien shall be in recordable form and shall be promptly delivered to the City Clerk for filing with the County Clerk. The notice must contain the name and address of the owner, if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the City and the balance due.
- (1) If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by this Chapter, the lien is a privileged lien subordinate only to tax liens;
 - (2) The City's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property if the mortgage lien was filed for record with the County Clerk before the date the repair, removal or demolition is begun by the City. The City's lien is superior to all other previously recorded judgment liens;
 - (3) A lien assessed under this Chapter accrues interest at the rate of ten percent (10%) a year from the assessment until paid in full;
 - (4) The City's right to the assessment may not be transferred to third parties;
 - (5) A lien acquired by the City under this Chapter for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person sixty-five (65) years of age or older;
 - (6) Seizure and sale of foreclosed property shall be conducted in accordance with Texas Local Government Code §214.004.

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2.38.100 Rehearing Of Certain Commission Orders.

- A. A hearing panel may grant one (1) rehearing if a person affected by a Commission order issued by the same hearing panel and resulting in notice of the repair, demolition, vacation, or securing of a structure by the city, the relocation of occupants of a structure by the city, or the assessment of a civil penalty requests the rehearing within twenty (20) days after the notice is provided in compliance with Section 2.38.090 of this Chapter. The rehearing may not be given prior to issuance of a notice.
 - B. The Director or designee of the City Manager may at any time request a rehearing on any case as s/he determines is appropriate. The hearing panel may grant or deny the request.
 - C. When a rehearing is granted, the Director or designee of the City Manager shall stay all administrative proceedings by the city against the affected property until conclusion of the rehearing.
 - D. A rehearing fee of FIVE HUNDRED AND FORTY DOLLARS AND NO/100 (\$540.00) must accompany a request for a rehearing, unless the Director or designee of the City Manager requests said rehearing. A person may make written affirmation of an inability to pay the fee, and the hearing panel shall waive the fee if it finds that payment will cause a financial hardship to the person requesting the rehearing.
 - E. The Director or designee of the City Manager shall provide notice of a rehearing in compliance with the notice requirements set forth in Section 2.38.090 of this Chapter for other hearings before a hearing panel of the Commission.
 - F. A decision of the hearing panel on the rehearing is final as to administrative remedies and may be appealed only to State District Court in accordance with 2.38.040(E).
2. Except as amended herein, Title 2 (ADMINISTRATION AND PERSONNEL) of the El Paso Municipal Code shall remain in full force and effect.
3. The Commission shall begin hearing cases within ninety (90) days of the effective date of this ordinance. This ordinance is effective on the date passed and approved by City Council. Until such time as the Commission is appointed and assembled to hear cases, the City Council shall continue to enforce the housing standards established in City Code 18.50 by and through its authority as granted in Texas Local Government Code Chapter 214.

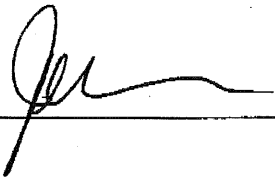
PASSED AND APPROVED this 15th day of February, 2005.

(SIGNATURES TO FOLLOW ON NEXT PAGE)

ORDINANCE NO. 15998

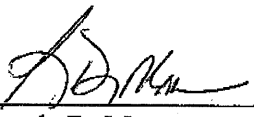
Document #: 1281
Document Name: BPT\3\Ordinance\Building & Standards Commission
Document Author: LHAY

CITY OF EL PASO



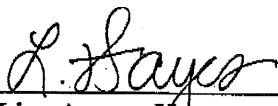
Joe Wardy
Mayor

ATTEST:




Richarda D. Morsen
City Clerk

APPROVED AS TO FORM:



Lisa Aceves Hayes
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, Director
Building Permits & Inspections Dept.

ORDINANCE NO. _____

15998

Document #: 1281
Document Name: BPR3\Ordinance\Building & Standards Commission
Document Author: LHAY

CITY CLERK DEPT.

**BYLAWS OF THE
BUILDING STANDARDS COMMISSION
El Paso, Texas**

SEP 23 PM 4:47

Article 1. Purpose

The purpose of these bylaws is to provide general guidance to the Commission in the performance of its duties as defined in the El Paso City Code, Chapter 2.38. As such, these bylaws shall be considered supplementary to the ordinance. No action of the Commission which is otherwise valid shall be invalidated solely by reason of Commission's failure to follow these bylaws.

Article 2. Officers

The officers of the Commission shall be a Chairman and a Vice Chairman. Their duties shall be those usually pertaining to their respective offices. The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman, the Vice Chairman shall preside. In the absence of the Chairman and Vice Chairman, any regular member elected by the majority of the members present and voting will act as Chairman Pro-Tem. Officers shall be regular members of the Commission. Officers shall serve one (1) year terms. Officers may serve consecutive terms without limit. The election of officers will take place at the first regularly scheduled meeting in November of each year and shall be determined by a majority vote of those members present and voting. The Chairman and Vice Chairman shall serve until their replacements are elected and may be removed from office by a 2/3 majority vote of the entire Commission. Vacancies in the Chairman or Vice Chairman position shall be filled by a simple majority vote of the Commission present and voting at any regular meeting.

The presiding officer shall preserve strict order and decorum at all regular and special meetings of the Commission, shall restate questions coming before the Commission as necessary for clarity, and shall announce the decision of the Commission on all actions taken. All questions of order shall be decided by the presiding officer. The presiding officer shall be allowed to vote, however, will not be entitled to initiate a vote through a motion or second of same.

The Secretary for the Board shall be the Director of Building Permits and Inspections or a designee of the City Manager. The Secretary shall provide all members with a meeting schedule as established by the Commission. The Secretary shall keep a written record of all meetings, resolutions, transactions, findings and determinations of the Commission. Additionally, the Secretary shall file the original and two copies of the minutes with the City Clerk within a reasonable time of acceptance by the Commission. The Secretary may present the recommendations of the Department or the City to the Commission.

Article 3. Meetings.

Regular meetings of the Commission shall be held at least once a month or as called for by the Chair of the Commission or the Secretary, and shall be held in the City Hall Building City Council Chambers, unless otherwise specified by the Commission.

Special meetings may be called by the Chairman, or in the absence of the Chairman, by the Vice Chairman on five (5) days written notice to all members.

All meetings shall be held in compliance with the Texas Open Meetings Act.

The minutes of the Commission shall show the vote of each member on each agenda item, or that such member was absent or failed to vote. A role call vote on procedural matters is not necessary. The copy of the written record of the Commission shall be public and be available for inspection at the Department of Building Permits and Inspections as well as on file with the City Clerk's office.

Each regularly appointed member shall be entitled to one vote on any matter that may come before the Commission. In the absence of the regular member, the alternate member appointed by the same council member as the regular member shall serve in the regular member's stead. In the absence of the regular member and the alternate member appointed by the same council member any other alternate member may be selected. Each qualified member of the Commission, including the Chairman, shall be entitled to vote on matters before the Commission. A member may change their vote after the roll has been completed and before announcement of the result, but not thereafter. After a vote has been made at that meeting, approval of a motion to reconsider would be necessary.

The presiding officer of the Commission may administer the following statement at the meeting:

"The Building Standards Commission of the City of El Paso is now in session. This Commission is established in accordance with ordinances of the City to provide due process in cases involving allegations of violations of El Paso City Code 18.50, according to specific legal rules. Evidence may be presented to the Commission for its consideration. Other parties interested in your case may also be heard at this time. Following this hearing you will be promptly notified of the Commission's decision."

Items scheduled for public hearing at a regular or special meeting of the Commission shall be presented in the following manner:

1. The Secretary shall present the issue to the Commission and may provide a recommendation of the Building Permits and Inspections Department or the City. Following the staff presentation, questions may be raised by the Commission and directed to staff.
2. The presiding officer will then ask the property owner, owner's representative lienholder, mortgagee or interested party ("Owner") to present a concise statement of their case. Following the Owner's presentation, questions may be raised by the Commission and directed to the Owner or staff.

3. The presiding officer will then ask other individuals interested in doing so to address the Commission on the issue. Following these presentations, questions may be raised by Commission members and directed to the individuals, the owner or staff.
4. The presiding officer may then call on the owner for a rebuttal. Following the owner's rebuttal, questions may be raised by Commission members and directed to the owner or staff.
5. At the completion of the discussion, the presiding officer shall then request a motion and a vote on the issue.

These procedures shall apply to regular or special meetings of the Commission, but shall not apply to meetings for sub-committees of the Commission.

Article 4. Rules

The Commission hereby adopts the following procedural rules, which shall govern meetings of the Commission whenever procedure is not regulated by these By-laws or by City Ordinance.

Every person desiring to speak shall address the presiding officer, shall be recognized by the presiding officer, and shall confine themselves to the question under consideration.

Every person shall have a reasonable opportunity to be heard at all public hearings of the Commission in regard to matters to be considered at such hearings whose comments are germane and relative to the subject matter before the Commission. Provided, however, that the time allowed for each citizen's appearance before the Commission may be limited to a fixed number of minutes at the discretion of the presiding officer.

A motion to table shall take precedence over all other motions, except the motion to adjourn, and a motion to table shall not be debatable.

A motion to reconsider any action taken by the Commission may be made at any time prior to adjournment of the same meeting at which such action was taken.

Article 5. Ethics.

All actions taken by the Commission members shall be in accordance with the Ethics Ordinance of the City of El Paso. Any member of the Commission who has a personal or financial interest in any specific matter presented before the Commission shall excuse themselves from the deliberation and shall not participate in any action taken on that specific matter. The member shall be required to leave the chamber during the discussion and may not return until the disposition of the item is complete.

It is further declared to be the policy of the Commission that, in order to comply with the Texas open meetings law as well as in fairness to the applicants appearing before

the Commission and those appearing in opposition to the issue, no discussion shall be held by any member of this Commission with the applicant or opposition concerning the application or other matter before the Commission either at home or office, or in person, by telephone or by letter. All such discussions shall be held at the public meeting called for that purpose so that all members shall have the full benefit of such discussion. Ex parte communications are prohibited.

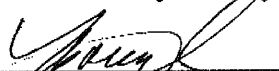
A member may change their vote after the roll has been completed and before announcement of the result, but not thereafter. Each regularly appointed member shall be entitled to one vote on any matter that may come before the Commission.


Proxies shall not be allowed.

Article 6. Amendments.

The Commission, by a majority vote of its full membership, may adopt, amend, or rescind these By-laws, after fourteen (14) days written notice of the proposed change has been provided to each regular and alternate member.

Adopted this 20th day of July , 2005


_____, Chairman


_____, Vice-Chairman


_____, Secretary